IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 22ND NOVEMBER 2006 / 1ST AGRAHAYANA 1928

WP(C).No. 15341 of 2004(B)

PETITIONER:

DRISHYAMOL S.,
D/O. LATE EX.GS-142996 PNR K.GOPI, RESIDING AT
KANDATHIL HOUSE, ERICKAVU P.O.,VIA. KARTHIKAPPALLY
ALAPPUZHA DISTRICT.

BY ADV. SRI.R.RAJASEKHARAN PILLAI

RESPONDENTS:

1. THE UNION OF INDIA,
   REPRESENTED BY THE SECRETARY, MINISTRY OF ROADS
   AND HIGHWAYS, BRDB, B WING 4TH FLOOR,KASHMIR HOUSE
   DHQ P.O., NEW DELHI-110011.

2. THE DIRECTOR,
   GENERAL BOARDER ROADS, SEEMA SADAK BHAWAN
   RING ROAD, DELHI CANTT, NEW DELHI-110010.

3. THE COMMANDANT,
   GREF CENTRE, DIGHI CAMP, PUNE-15.

4. THE CHIEF ENGINEER,
   HQCE (P) UDAYAK (GREF), C/O. 99 APO.

5. THE OFFICER COMMANDING,
   1628 PNR COY (GREF) C/O. 99 APO.

R1 to R5 BY ADV. SRI.S.KRISHNAMOORTHY, ADDL.CGSC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER's EXTS:

EXT.P1 TRUE COPY OF THE LETTER DTD. 12/3/2002 FROM THE 3RD RESPONDENT.

EXT.P2 TRUE COPY OF THE LR.NO.1456/06/107/E/1D DTD. 28TH MARCH 2002 FROM THE 3RD RESPONDENT TO THE PETITIONER'S MOTHER.

EXT.P3 TRUE COPY OF APPLICATION FORM SEEKING APPOINTMENT TO THE PETITIONER.

EXT.P4 TRUE COPY OF THE LR.NO.1456/6/111/EIR DTD. 31/1/2004 FROM THE 3RD RESPONDENT TO THE PETITIONER'S MOTHER.

EXT.P5 TRUE COPY OF THE LETTER DTD. 8TH JULY 2002 NO.12701/EMP/POL/DGBR/64/EG2 FROM THE 2ND RESPONDENT TO THE 3RD RESPONDENT.

EXT.P6 TURE COPY OF THE OFFICE MEMORANDUM DTD. 5/5/2003 OF HE IST RESPONDENT.

EXT.P7 TRUE COPY OF THE REPRESENTATION DTD. 4/3/2004 SUBMITTED BY THE PETITIONER'S MOTHER BEFORE THE 3RD RESPONDENT.

EXT.P8 TRUE COPY OF THE LETTER NO.1456/6/27/EIR DTD. 13/3/2004 FROM THE 3RD RESPONDENT TO THE PETITIONER'S MOTHER.

RESPONDENTS' EXTS:

EXT.R1 TRUE COP OF LETTER NO.142996-K/KG/123/CA5 DTD. 12TH MARCH 2002 OF THE RESPONDENT.

EXT.R2 TRUE COPY OF THE APPLICATION OF ONE MRS.SOBHANA DTD. 9/5/2002.

EXT.R3 TRUE COPY OF THE LETTER NO.1456/06/107/EIR DTD. 28/5/2002 OF THE DEPARTMENT.

EXT.R4 TRUE COPY OF THE APPLICATION DTD. 16/12/2003 OF THE PETITIONER.

EXT.R5 TRUE COPY OF THE OFFICE MEMO NO.14014/06/04-ESTT (D) DTD. 9/10/1998.

EXT.R6 TRUE COPY OF OFFICE MEMORANDUM DTD. 3/12/1999 OF THE RESPONDENT.

EXT.R7 TRUE COPY OF LETTER NO.12701/EMP/POL/DGBR/64/EG2 DTD. 8/7/2002 OF THE DEPARTMENT.

EXT.R8 TRUE COPY OF LETTER NO.1456/LB/111/E1R DTD. 31/1/2004 OF THE DEPARTMENT.

EXT.R9 TRUE COPY OF THE APPLICATION DTD. 4/3/2004 OF ONE MRS. SOBHANA.

EXT.P10 TRUE COPY OF OFFICE MEMORANDUM DTD. 5/5/2003 OF THE DEPARTMENT.

EXT.P11 TRUE COPY OF LETTER NO.1456/127/E1R DTD. 13/3/2004 OF THE DEPARTMENT.

P.R.RAMAN, J.

W.P.(C).NO.15341 OF 2004

Dated this the 22nd day of November, 2006

JUDGMENT

Petitioner's father died in harness on 3/3/2002. Petitioner, her brother and mother are the Legal representatives left behind the deceased. It is the contention of the petitioner that they are hailing from a very poor and humble circumstances. Though an application was moved for claiming compassionate appointment to the petitioner in the prescribed form on 16/12/2003, the same was rejected by Ext.P4 stating that the policy for giving employment on compassionate ground was revised and as per the revised policy the dependent seeking employment ought to be a major at the time of death of the employee concerned. Subsequently, when the time limit for submitting claim was revised

and provided an extended period of 3 years, the authorities were moved again by filing Ext.P7. By Ext.P8 the mother of the petitioner was informed to submit a fresh DD duly completed in all respects for consideration. Petitioner asserts that completion of 18 years by the dependent as on the date of death of the employee is not a pre-requisite for claiming compassionate appointment. In such circumstances, the petitioner has filed this writ petition for appropriate direction commanding the respondents to consider her claim for appointment on compassionate ground for Group D post and also to quash Exts.P4 and P8.

2. In the counter affidavit filed on behalf of the respondents it is stated that Gopi, petitioner's father, died on 3rd March, 2002, while in service. It is admitted that

Smt. Sobhana, wife of the deceased, submitted an application on 10th May, 2002 intimating that her daughter and son aged 16 years and 11 1/2 years were studying and whether the claim for dependency benefit could be submitted on completion of 18 years of age of her son G.Dileep to which the respondents stated to have replied that there is no provision to keep a vacancy reserved for long time and as per the revised policy, compassionate appointment is provided to the dependents within one year from the date of death of the Government Servant. However, as and when her son attains the age of 18 years, he may be advised to apply for compassionate appointment, which the department will consider in the light of rules/policy governing the matter at the relevant time. Subsequently, on 16th December, 2003 Smt.

Sobhana submitted a fresh application, but the department did not consider the same on merits, since as per the revised policy, the only dependents, who have completed the age of 18 years at the time of death, are eligible to be considered for compassionate appointment. Since in the present case the dependents did not complete the age of 18 years as on the date of death, they are not eligible to be considered. However, according to the respondents, the wife was advised that if she is willing to serve in the department anywhere in India, she can sponsor herself for which DD form was also forwarded. She was also informed that as per the revised policy contained in the letter of the Government of India, Ministry of Personnel Public Grievances and Pension dated 5th May, 2003, the maximum period within which the application should be

submitted is three years.

3. Therefore, the question that arises for consideration is whether the claim of the petitioner herein, who is the daughter of late PNR K.Gopi, who died in harness, is entitled to be considered for compassionate appointment by the respondents.

4. It is admitted that Gopi, who was in the service of the respondents, died on 3/3/2002. He had two children, a daughter and a son, who were minors at the time of his death. The petitioner attained majority only on 18/11/2003 and an application was submitted on 16/12/2003. Though the application is beyond a period of one year from the date of death of the deceased, according to the respondents, based on the revised policy, application has to be filed within a period of three years. If so, the petitioner is entitled

to be considered for compassionate appointment. The respondents have not considered the application of the petitioner on merits. In a similar case in O.P.No.3338/2002 this Court found that in the absence of any laches on the part of the applicant, the claim ought to have been considered on merits and further held that any subsequent change in the policy could not have adversely affected the right of the applicant, if the applicant was eligible to be considered based on the norms fixed and in force as on the date of death of the deceased.

5. It is true that the Apex Court in **Umesh Kumar Nagpal v. State of Haryana and others ((1994) 4 SCC 138)** held that compassionate employment cannot be granted after a lapse of a reasonable period. On examination of the factual position in the present case, it

cannot be said that reasonable period was elapsed as on the date of application and so the dictum laid down in the said decision has no factual application to the present case.

6. In the circumstances, there will be a direction to the 3rd respondent to consider the claim of the petitioner for compassionate appointment to a suitable post and dispose of the application on merits as expeditiously as possible and at any rate within a period of four months.

Writ Petition is allowed.

A copy of this judgment shall be produced by the petitioner before the 3rd respondent for information and compliance.

P.R.RAMAN,
JUDGE.

kcv.